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William Diaz-Lopez

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JOHN RYZNIC

FLORIDA TURBINE TECHNOLOGIES, INC.

1701 MILITARY TRAIL, SUITE 110

JUPITER, FL 33458-7887

EXAMINER

STRIMBU, GREGORY J

ART UNIT

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3634

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/078,607	Applicant(s) DIAZ-LOPEZ, WILLIAM	
	Examiner Gregory J. Strimbu	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 25 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election with traverse of Group I in the reply filed on March 5, 2007 is acknowledged. The traversal is on the ground(s) that the elements of claim 9 follow the elements recited in claim 1. This is not found persuasive because the elements of claim 1 do not "follow" the elements of claim 9. Note that only claim 1 requires a control means which requires the examiner to search for the function of the control means and the structural equivalents thereto as set forth in the specification. Additionally, claim 9 requires monitoring for vibrations near the door which is not required by claim 1. Therefore, the examiner has made a *prima facie* case that restriction is proper. Not only are the Groups separately patentable as evidenced by their separate classification, the examiner has provided additional evidence of substantial burden as set forth above. Finally, the applicant's statement that the elements of claim 9 "follow" the elements of claim 1 is not a sufficient showing or evidence that the restriction is improper.

The requirement is still deemed proper and is therefore made FINAL.

Claims 9-13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 5, 2007.

Claim Rejections - 35 USC § 112

Claims 3, 5-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “the vibration sensed by the vibration sensor is an earthquake or a bomb explosion” on line 2 of claim 3 render the claims indefinite because it is unclear how the applicant can know what vibrations will be sensed by the vibration sensor. It is conceivable that something other than an earthquake or a bomb explosion could create a vibration that is great enough to be sensed by the vibration sensor. Recitations such as “as magnetic contact positioned near the permanent magnet” on line 4 of claim 4 is grammatically incorrect and confusing. Recitations such as “low” on line 3 of claim 5 render the claims indefinite because they are relative terms whose meaning cannot be readily ascertained by one with ordinary skill in the art and are not defined by the specification. Recitations such as “door” on line 2 of claim 25 render the claims indefinite because it is unclear if the applicant is referring to the door set forth above or is attempting to set forth another door in addition to the one set forth above. Recitations such as “vibration sensor detects the vibration above the certain level” on line 3 of claim 25 render the claims indefinite because it is unclear how the vibration sensor can always sense vibrations above the certain level since it presumes that there will be vibrations above the certain level all the time.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3, 9, 11, 13, 41, 44, 48, 56, 58 and 62 of U.S. Patent No. 5,992,094 in view of Japanese Patent Publication No. 5059852 and Kelly et al. (US 4703962).

U.S. Patent No. 5,992,094 discloses the elements of claims 1-4, but for specifically reciting a door frame, a door lock, a relay and a control means that locks the door.

However, Japanese Patent Publication No. 5059852 discloses door locks 2, and a control means 1 that locks and unlocks the doors.

While Kelly et al. discloses a door frame 13, a magnetic lock 20 and a relay 158.

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It would have been obvious to one of ordinary skill in the art to provide claims 1-3, 9, 11, 13, 41, 44, 56, 58 and 62 of U.S. Patent No. 5,992,094 with door locks and a control means, as taught by Japanese Patent Publication No. 5059852, so that a single control means can control the locking and unlocking of the doors and it would have been obvious to one of ordinary skill in the art to provide claims 1-3, 9, 11, 13, 41, 44, 56, 58 and 62 of U.S. Patent No. 5,992,094 with a door frame, a magnetic lock and a relay, as taught by Kelly, so that the door can be quickly and securely locked.

Claims 1-4 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 7-16 of U.S. Patent No. 6,298,603 in view of Kelly et al. (US 4703962).

U.S. Patent No. 5,992,094 discloses the elements of claims 1-4, but for specifically reciting a door frame and a relay.

However, Kelly et al. discloses a door frame 13 and a relay 158.

It would have been obvious to one of ordinary skill in the art to provide claims 1 and 7-16 of U.S. Patent No. 6,298,603 with a door frame and a relay, as taught by Kelly, so that the door can be quickly and securely locked.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent Publication No. 5059852. Japanese Patent Publication No. 5059852 discloses a door lock control system, comprising:

a door (not shown, but see paragraph 6, line 6) mounted in a door frame (although not shown, the door must have a frame to mount the lock 2 between the door and the door frame),

a door lock 2 associated with the door to lock and unlock the door; control means 1 to lock and unlock the door lock; and, a vibration sensor 5 associated with the control means, the control means causing the door lock to be unlocked when a vibration above a certain level is sensed by the vibration sensor;

the vibration sensed by the vibration sensor is an earthquake or a bomb explosion (claim 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Should the applicant disagree that Japanese Patent Publication No. 5059852 fails to disclose a door frame, claims 1-3 and 25 are rejected under 35 U.S.C. 103(a) as

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being unpatentable over Japanese Patent Publication No. 5059852 in view of Kelly et al. (US 4703962). Japanese Patent Publication No. 5059852 discloses a door lock control system, comprising:

a door (not shown, but see paragraph 6, line 6),

a door lock 2 associated with a door to lock and unlock the door; control means 1 to lock and unlock the door lock; and, a vibration sensor 5 associated with the control means, the control means causing the door lock to be unlocked when a vibration above a certain level is sensed by the vibration sensor;

the vibration sensed by the vibration sensor is an earthquake or a bomb explosion (claim 3). Japanese Patent Publication No. 5059852 is silent concerning a magnetic lock.

However, Kelly et al. discloses a door 14 mounted in a door frame 13, a magnetic door lock 20 associated with the door to lock and unlock the door. Kelly et al. further discloses a means 130 for delaying the unlocking of a door by a predetermined time (see column 7, line 66 to column 8, line 2), wherein the means for delaying the unlocking of the door can be overridden (see column 8, lines 19-23) and includes a relay switch 158.

It would have been obvious to one of ordinary skill in the art to provide Japanese Patent Publication No. 5059852 with a door frame, magnetic lock, and time delay means, as taught by Kelly et al., to provide a secure means for holding the door in a closed position and unlocking the door after a predetermined amount of time.

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Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication No. 5059852 in view of Kelly et al. as applied to claims 1-3 and 25 above, and further in view of Wallick (US 5929767). Wallick, in figure 11, discloses a vibration sensor comprising a permanent magnet (magnet) connected to a pendulum (stiff rod), as magnetic contact (inductor) positioned near the permanent magnet, and a relay switch (comparator).

It would have been obvious to one of ordinary skill in the art to provide Japanese Patent Publication No. 5059852, as modified above, with a vibration sensor, as taught by Wallick, to provide an accurate means for determining if an earthquake is of a value to warrant unlocking the doors.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication No. 5059852 in view of Kelly et al. as applied to claims 1-3 and 25 above, and further in view of Maus (US 5652563). Maus discloses a door lock control system comprising a low voltage DC power source 19 and a backup battery 23.

It would have been obvious to one of ordinary skill in the art to provide Japanese Patent Publication No. 5059852 with a power system, as taught by Maus, to provide a reliable means for powering the control system.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent Publication No. 5059852 in view of Kelly et al. and Maus as applied to

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claim 5 above, and further in view of Wallick. Wallick, in figure 9, discloses a control box 242 housing a power source 236 and an electronic system 230.

It would have been obvious to one of ordinary skill in the art to provide Japanese Patent Publication No. 5059852, as modified above, with a control box, as taught by Wallick, to provide a means for protecting the door lock control system from the elements.

With respect to claims 7 and 8, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to position the control box remote from the vibrations of the door on a rigid wall.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on 571-272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Strimbu/
Primary Examiner, Art Unit 3634